

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

GARY F. BASTIEN,

Petitioner

v.

RONNIE R. HOLT,

Respondent

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CIVIL NO. 1:CV-11-0036

(Judge Rambo)

(Magistrate Judge Mannion)

MEMORANDUM

Before the court is a July 13, 2011 report of the magistrate judge to whom this matter was referred. The magistrate judge recommends that the petition for writ of habeas corpus filed pursuant to 28 U.S.C. § 2241 be dismissed as it is the improper procedure to bring Petitioner's claims and, therefore, this court does not have jurisdiction. Petitioner has filed objections to the report and recommendation and the matter is ripe for disposition.

In his objections, Petitioner claims his § 2241 petition is the proper method because, he claims, the judgment is void and the action is to prevent the warden from executing the judgment. Petitioner's claim that the judgment is void is based on allegations that the trial court lacked jurisdiction and that his counsel was incompetent. This amounts to a challenge to the conviction and/or sentence. Petitioner further states in his objections that he "is not challenging the validity of the order or judgment from the criminal case but rather is challenging the Warden's execution of an invalid judgment rendered." (Petr.'s Obj., Doc. 15, at p. 5.)

In order for this judgment to be void, the original proceedings and/or judgment must be under attack. This requires proceeding by way of 28 U.S.C. § 2255. An appropriate order will be issued.

s/Sylvia H. Rambo
United States District Judge

Dated: September 21, 2011.

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(Judge Rambo)

(Magistrate Judge Mannion)

ORDER

In accordance with the accompanying memorandum, **IT IS HEREBY
ORDERED THAT:**

- 1) The court adopts the report and recommendation of Magistrate Judge Mannion.
- 2) The petition filed pursuant to 28 U.S.C. § 2241 is dismissed for lack of jurisdiction.
- 3) This court declines to issue a certificate of appealability.
- 4) The Clerk of Court shall close the file.

s/Sylvia H. Rambo
United States District Judge

Dated: September 21, 2011.